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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,319	04/12/2007	Manfred Berndt	20040232-2	6504

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EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT	PAPER NUMBER
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3781

NOTIFICATION DATE	DELIVERY MODE
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04/15/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPOPS.LEGAL@agilent.com

Office Action Summary	Application No. 10/589,319	Applicant(s) BERNDT ET AL.	
	Examiner NIKI M. ELOSHWAY	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/4/10, 8/7/09, 8/14/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are considered vague and indefinite for the following reasons:

(a) Claim 1 recites the limitation "the ...second layer" in 4. There is insufficient antecedent basis for this limitation in the claim.

(b) The dependent claims not specifically mentioned are rejected as being dependent upon a rejected base claim since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 5-7, 10-13, 15, 21, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Haggerty (U.S. 4,331,254). Haggerty teaches a cover, shown in figure 1, for sealing a

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container comprising at least one bottom layer 4 and at least one top layer 1 arranged over the bottom layer. The bottom layer 4 and second layer 1 each comprising a structure to form a recloseable aperture (slits 7-17) of the cover and allowing to access through the layers into the container. The slits define moveable flaps. The third layer can be element 2 or 3. The seal is element 3. The top layer is considered “diaphragm-like” to the degree set forth in the claims.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haggerty (U.S. 4,331,254) in view of Shillington (U.S. 5,024,327). Haggerty discloses the claimed invention except for the flap being formed by a U-shaped cut. Shillington teaches that it is known to form closure flaps from U-shaped cuts (see figure 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure of Haggerty with the flaps being formed by U-shaped cuts, as taught by Shillington, in order to give the flaps a rounded free end.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haggerty (U.S. 4,331,254) in view of Albanesi et al. (U.S. 6,586,063). Haggerty discloses the claimed invention except for the layers being secured by polymerization. Albanesi et al. teach that it is known to secure layers of a container together by polymerization (see col. 3 lines 20-33). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure of Haggerty with the layers being secured by polymerization, as taught by Albanesi et al., in order to permanently secure the layers without the use of separate fasteners.

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9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haggerty (U.S. 4,331,254) in view of Bauer et al. (U.S. 6,902,076). Haggerty discloses the claimed invention except for the layers being secured by lamination. Bauer et al. teach that it is known to secure layers of a container together by lamination (see element 26). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure of Haggerty with the layers being secured by lamination, as taught by Bauer et al., in order to permanently secure the layers without the use of separate fasteners.

10. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haggerty (U.S. 4,331,254) in view of Stull (U.S. 5,071,017). Haggerty discloses the claimed invention except for the seal being silicone. Stull teaches that it is known to construct a seal of silicone (see col. 6 lines 38-41). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure of Haggerty with the seal being silicone, as taught by Stull, in order to give the seal the strength and flexibility characteristic of silicone, and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

11. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haggerty (U.S. 4,331,254) in view of Jenkins et al. (U.S. 4,847,050). Haggerty discloses the claimed invention except for a layer being polyester. Jenkins et al. teach that it is known to provide a seal with a layer being polyester (see col. 8 lines 58-68). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure of Haggerty with a layer being polyester, as taught by Jenkins et al., in order to give the seal the strength characteristic of polyester, and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

12. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haggerty (U.S. 4,331,254) in view of Mavin et al. (U.S. 2004/0217083). Haggerty discloses the claimed invention except

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for the electrically conductive coating. Mavin et al. teach that it is known to provide a seal with an electrically conductive coating (see paragraph [0061]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure of Haggerty with an electrically conductive coating, as taught by Mavin et al., in order to secure the layers together using a heat seal which does not require separate fasteners.

13. Claims 19 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Haggerty (U.S. 4,331,254).

Regarding claim 19, Haggerty discloses the claimed invention except for the thickness of the cover. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure of Haggerty with the cover having a thickness as set forth in claim 19, in order to make the cover flexible and lightweight and since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 20, Haggerty discloses the claimed invention except for the aperture comprising an area smaller than 60 mm². It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure of Haggerty with the aperture comprising an area smaller than 60 mm², in order to restrict the amount of venting or dispensing and since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

14. Claims 1, 21, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berray et al. (U.S. 6,939,513) in view of Haggerty (U.S. 4,331,254). Berray et al. disclose the claimed invention except for the additional layer of the closure. Haggerty teaches that it is known to provide a closure with a plurality of layers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Berray et al. with closure having a plurality of layers, as taught by Haggerty, in order to better seal the aperture after initial opening.

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Regarding claim 23, the layers of Haggerty are mechanically welded to the support plate.

15. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berray et al. (U.S. 6,939,513) in view of Haggerty (U.S. 4,331,254), as applied to claim 21 above, and further in view of Hague et al. (U.S. 6,286,698). The modified device of Berray et al. disclose the claimed invention except for cover being glued to the well plate. Hague et al. teach that it is known to provide a closure with a cover that is glued to the well plate (see col. 5 lines 21-27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified device of Berray et al. with cover being glued to the well plate, as taught by Hague et al., in order to secure the cover without the use of separate fasteners.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the recloseable aperture.

17. THIS ACTION IS NON-FINAL.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Niki M. Eloshway/
Niki M. Eloshway
Examiner
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nme